

Boston Public Health Commission Regulation Restricting the Sale of Tobacco Products in the City of Boston

Whereas, tobacco is one of the leading causes of death in the United States and lung cancer, which has a correlation to smoking, has been the leading cause of cancer death among Boston residents;

Whereas, tobacco is currently sold in health care institutions such as pharmacies and drug stores;

Whereas, the sale of tobacco products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication;

Whereas, educational institutions in the City of Boston also sell tobacco products to the younger population, which is particularly at risk for becoming smokers;

Whereas, the sale of tobacco products is also incompatible with the mission of educational institutions which educate the younger population about social, environmental and health risks and harms;

Whereas, there are certain tobacco products such as blunt wraps that are frequently marketed and sold to the youth and are also known to be used as drug paraphernalia;

Therefore, the Boston Public Health Commission in recognition of the harmful effects of tobacco on vulnerable populations, believes that it is important that the sale of tobacco products be banned by educational and health care institutions in the City of Boston and that blunt wraps also be banned in furtherance of its mission to protect, promote and preserve the health and well-being of Boston citizens.

Section I: Definitions

Blunt wrap: cigarette-like rolling paper that is thick and dark and usually made from tobacco leaves. Blunt wraps come in flavored varieties and are heavily marketed to the youth and often used as drug paraphernalia.

Health care institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

Entity: any single individual, group of individuals, corporation, partnership, institution, employer, association, firm or any other legal entity whether public or private.

Educational institution: any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Retail establishment: any store that sells goods or articles of personal services to the public.

Tobacco products: any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe, tobacco, snuff, chewing tobacco and dipping tobacco.

Section II: Prohibition Against the Sale of Tobacco Products by Health Care Institutions

No health care institution located in the City of Boston shall sell or cause to be sold tobacco products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

Section III: Prohibition Against the Sale of Tobacco Products by Educational Institutions

No educational institution located in the City of Boston shall sell or cause to be sold tobacco products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

Section IV: Prohibition Against the Sale of Blunt Wraps by All Entities

No retail establishment or entity in the City of Boston shall sell or cause to be sold blunt wraps.

Section V: Violations

1. A violator of this Regulation may receive:
 - a. In the case of a first violation a fine of two hundred dollars (\$200.00);
 - b. In the case of a second violation within 24 months of the first violation a fine of seven hundred dollars (\$700.00); and,
 - c. In the case of a three or more violations within 24 months of the second or current violation, a fine of one thousand dollars (\$1000.00) for each violation.
2. Each calendar day an entity operates in violation of any provision of this regulation shall be deemed a separate violation.

3. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Boston Public Health Commission or a City of Boston department or agency from suspending, or revoking any license or permit issued by and within the jurisdiction of such departments or agency for repeated violations of this regulation.

Section VI: Enforcement

1. Authority to enforce this regulation shall be held by the Boston Public Health Commission, its subsidiary programs or designees; the City of Boston Inspectional Services Department and the City of Boston Police Department.
2. Any violation of this regulation may be enforced in the manner provided in M.G.L. c.111 §187, by the Boston Public Health Commission, its subsidiary programs or designees.
3. Any person may register a complaint under this Regulation to initiate an investigation and enforcement with the Boston Public Health Commission, its subsidiary programs or designees.
4. Any fines or fees collected under this regulation shall be used for the enforcement of these regulations and/or for educational programs on the harmful effects of tobacco.

Section VII: Non-retaliation

No person or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this regulation or exercises any right conferred by this regulation.

Section VIII: Non-preemption

Nothing in this Regulation shall be deemed to preempt the further limitation of the sale of tobacco products in the City of Boston by any local regulatory body within the limits of its authority and jurisdiction.

Section IX: Severability

If any provision, clause, sentence, paragraph or word of this regulation or the application thereof to any person, entity or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be

given effect without the invalid provisions or application and to this end the provisions of this regulation are declared severable.

Section X: Effective Date

This Regulation shall take effect within 60 days from the date of acceptance by the Board of the Boston Public Health Commission.

Authority: M.G.L. c. 111, §31; M.G.L. c. 111, App. §§2-6(b), 2-7(a)(1), and 2-7(a)(15).